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| 826 7590 03/17/2011 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000 | | | EXAMINER OKEKE, ONYEDIKA C | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/500,016

Applicant(s)

HOSKING ET AL.

Examiner

Dika C. Okeke

Art Unit

2425

Period for Reply -- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9,10,12-16,19-33,36,40,42-45,48-53 and 55-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9,10,12-16,19-33,36,40,42-45,48-53 and 55-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of Papers Cited (PTO-532)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on 22 December 2010 has been entered. Claims 4, 12-15, 20, 22, 24, 25, 30-32, 42, 45, 48, 52, 55 and 64 have been amended. Claims 17 and 54 have been canceled. Claims 1, 4-7, 9, 10, 12-16, 19-33, 36, 40, 42-45, 48-53 and 55-66 are now pending.

Response to Arguments

2. Applicants' arguments with respect to claims 1, 33, 40 and 66 have been considered but are moot in view of the new ground(s) of rejection.

3. Further, Applicant argues on page 15 of the remarks that the portable device of Hale is "clearly the type of device that is owned by a particular venue and supplied to a user for their visit to the venue."

4. Examiner respectfully disagrees. Hale describes instances of individual users carrying personal portable devices and arriving at theme parks, rides, meeting areas etc (col. 2, lines 14-18; col. 4, lines 40-43, 51-52). There is no concrete evidence proffered by the Applicant that Hale's portable device is always owned by the venue. The argument that Hale's multi-unit docking station that can load content on to the portable devices simultaneously (col. 3, lines 10-12) suggests ownership by the venue is not accepted by the Examiner. This is because Hale just teaches that content can be loaded onto the portable device – it doesn't say that it belongs to the venue, as the portable device could be the user's own device.

5. Nevertheless, assuming in *arguendo* that Hale's device does in fact suggest strict ownership by the venue, Examiner disagrees with Applicant's contention that one of ordinary skill in the art would not have considered adapting Hale to use a cellular telephone in place of Hale's portable device. Hale describes different exemplary embodiments of his portable device and listed a "PDA or similar hand held device with wireless communications receiver. The receiver may act as a modification to existing devices that store and display text information." (col. 6, lines 44-48). However, a new reference is provided below with proper motivation why a cellular telephone can be used with Hale's teachings.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1, 4-7, 9, 10, 12-16, 19-31, 33, 36, 40, 42-45, 48-53 and 55-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zwaneveld (CA 2129925) in view of Hale (US 6,785,539) and further in view of Engelke et al (US 5,974,116 – referred hereinafter as 'Engelke').**

Regarding claim 1, Zwaneveld teaches a captioning system for providing captions for a presentation to a user, the captioning system comprising:

a caption store (storage element 11) configured to store one or more sets of captions each set being associated with one or more presentations and each set comprising a plurality of captions for playout at different timings during the associated presentation (page 9, line 18 – page 10, line 21; *for display cue stamps comprises a display time stamp, each display time stamp comprising a first time and second time respectively marking the beginning and the end of the display of a subtitle*).

However, Zwaneveld does not explicitly teach:

a cellular telephone having:

a first receiver configured to receive, from said caption store, at least one set of captions for storage in the cellular telephone or to receive a sequence of captions for a presentation to be made to a user associated with the cellular telephone;

a microphone configured to receive a wireless acoustic signal that is time synchronized with the presentation for use in defining the timing during the presentation at which each caption is to be output to the user associated with the cellular telephone;

a caption output circuit configured to output each received caption to the user associated with the cellular telephone; and

a timing controller configured to process said received wireless acoustic signal to determine the timing during the presentation at which each caption should be output and configured to control said caption output circuit so that said each caption is output to said user at the determined timing.

Hale teaches:

a portable user device (portable device 14) having:

a first receiver configured to receive, from said caption store, at least one set of captions for storage in the user device or to receive a sequence of captions for a presentation to be made to a user associated with the user device (col. 2, line 63 – col. 3, line3; col. 3, lines 17-21 – *for the portable user device receives caption texts and stores them*);

a caption output circuit configured to output each received caption to the user associated with the user device; and a timing controller configured to process said received wireless signal to determine the timing during the presentation at which each caption should be output and configured to control said caption output circuit so that said each caption is output to said user at the determined timing (col. 4, line 61 – col. 5, line15; col. 5, lines 17-31 – *it is noted that a timing controller exists in the user device for the subtitles to be synced to the proper presentation and displayed at the appropriate time denoted by the display time codes*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the user device of Zwaneveld to be a "portable" device to work in tandem with the caption storage, as taught by Hale, for the benefit of combating the problems presented by "open captioning" and presenting captioning conveniently to a user (Hale, col. 1, lines 35-41; col. 2, lines 1-4).

Engelke teaches a cellular telephone having a microphone configured to receive a wireless acoustic signal that is time synchronized with the presentation for use in defining the timing during the presentation at which each caption is to be output to the user associated with the user device (Figs. 1 and 2, personal interpreter 10, cellular telephone 20, microphone 22; col. 2, lines 58-64; col. 3, lines 4-8; col. 3, lines 35-45; col. 4, lines 20-41; **col. 6, lines 24-37** – microphone receives acoustic audio and the cellular telephone uses it to garner captions of the acoustic signals or voice that it just received).

Therefore, it would have been obvious to an ordinary skilled artisan at the time the invention was made to modify the user device of Zwaneveld and portable device of Hale by making it a cellular phone (useful for sending acoustic signals upstream and receiving a caption/subtitle downstream from the caption store or relay), as taught by Engelke, for the benefit of allowing a hearing impaired individual readily enjoy the benefits of a portable telecommunication devices especially in a "public" forum.

Regarding claim 4, Hale further teaches the system according to claim 1, wherein said captions include text and wherein said caption output circuit is configured to output said captions to a display device associated with the cellular telephone for display to the user (col. 3, lines 34-40; col. 5, lines 17-31; *for closed captions include text and captions are displayed on the screen display of the portable device 14*).

Regarding claim 5, Hale further teaches the system according to claim 4, wherein said captions include formatting information for controlling the format of the text displayed on said display (*for the subtitles have certain formats which can be altered. It*

is noted that displayable texts are encoded with "formatting information" or instructions on how and where to appear on a display screen).

Regarding claim 6, Zwaneveld further teaches the system according to claim 4, wherein each caption includes duration information defining the duration that the caption should be displayed to the user (page 11, lines 1-6; *for the display cue stamp comprises display time stamp which denotes when the subtitles are to be shown. The display time stamp further denotes a beginning and the end of the display of a subtitle – reading on claimed duration of caption display).*

Regarding 7, Zwaneveld further teaches the system according to claim 4, wherein said caption includes timing information defining the time at which the caption should be displayed to the user during the presentation (page 11, lines 1-6; *for display time cues include display time marks denoting the timing information – beginning and end – of the subtitles).*

Regarding claims 9 and 10, Zwaneveld further teaches the system according to claim 1, wherein said presentation: includes audio and includes video (page 25, lines 6-10+; page 30, lines 6-13. *See also* Hale, col. 3, lines 34-40, 48-55 – for teaching on audio and video presentations).

Regarding claim 12, the combined teachings of Zwaneveld, Hale and Engelke further teaches the system according to claim 1, wherein said caption store is formed in a memory card which is insertable into said user device and wherein said user device includes a reader for reading captions from said memory card when inserted therein (see Zwaneveld, page 17, lines 6-12; page 29, lines 11-17; *for the subtitle text files are*

*stored in a memory medium – RAM, CD-Rom, floppy disk – which are portable; the caption storage element 11 can be embodied in a portable memory medium and sent to the user device – processing equipment – which would read/process it and send it to a display element. **See also Hale, for teaching on storing of captions in the portable device and on memory cards -- col. 2, line 63 – col. 3, line 3; also See Engelke for teaching of a cellular telephone).***

Regarding claims 13-15, **note the discussion on claim 12.** Hale further teaches the system according to claim 1, wherein said caption store is provided in a computer system and wherein said cellular telephone includes a communication module for communicating with said computer system; wherein said computer system is remote from said cellular telephone; and wherein said cellular telephone includes a housing and wherein said communication module is provided within said housing (col. 2, line 63 – col. 3, line 17; *for it is noted that a docking station is used for connecting the portable device to a computer system; the docking station also may be used to connect the portable device to remote content sources. It is also well known that a mobile phone or PDA includes a housing and it is obvious that a communication module is housed inside to enable communication with a docking station. See also Engelke for teaching of a cellular telephone for communicating with a remote computer system or relay and communication module housed in the cellular telephone – Figs 1 and 2; col. 6, lines 24-38).*

Regarding claims 16, Hale further teaches the system according to claim 13, wherein said communication module is configured to communicate with said remote computer system using a wireless communication link (col. 3, lines 12-16).

Regarding claim 19, the combined teachings of Zwaneveld, Hale and Engelke further teach the system according to claim 42, wherein said synchronization information defines expected time points for one or more predetermined portions of the presentation (*for the display time cues and time stamp indicates points denoting the portions of the presentation to output subtitle information. See also Hale for teaching on synchronization code associated with a beginning portion of a presentation*).

Regarding claim 20, Zwaneveld further teaches the system according to claim 19, wherein said user device comprises a monitoring circuit configured to monitor said presentation to identify the actual time points of said one or more predetermined portions (*for a "predetermined" portion of presentation can simply be the actual portions of the presentation that the user desires to receive closed caption or subtitle data; hence the actual time points of a predetermined portion is known by the user device because it is the device that user utilizes to request the closed caption or subtitle information. Hence giving this the broadest interpretation, the monitoring circuit in this case is merely checking or tracking the actual time in the presentation in which the user requested to receive caption information*) and wherein said timing controller is responsive to the difference between the actual timings and the expected timings to control the outputting of the captions by said caption output circuit (*for the display time stamps and cue identify the expected timing to output the caption information; the*

responsiveness of said timing controller to the difference between the actual timing and the expected timing is merely a form of error correction of synchronization signals.

OFFICIAL NOTICE is hereby taken to the fact that error correction is well known concept in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the timing controller responsive to the difference between the actual and expected times, as an element of error correction to ensure the correct captions are being outputted). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Regarding claim 21, Engelke further teaches the system according to claim 20, wherein said predetermined portions of said presentation correspond to portions of audio of the presentation and wherein said monitoring circuit is coupled to said microphone for sensing the audio of the presentation and a includes comparator for comparing the received audio with the expected portions of the audio defined by said synchronization information (Figs. 1 and 2; col. 6, lines 24-38).

Regarding claim 22, Zwaneveld further teaches the system according to claim 20, wherein said user device has an acquisition mode of operation in which an output of said monitoring circuit is compared with said predetermined points defined by said synchronization information to identify a current position within said presentation and a tracking mode of operation in which the output of said monitoring circuit is compared with a current predetermined portion defined by said synchronization information (page 30, lines 13-22; *for the output of the monitoring circuit is merely the time the user requests sets course to request for a subtitle, which is compared to the syncing display*

time stamp. Hence, the acquisition and tracking modes of operation are merely met by the comparison of audio signal signatures and associated subtitles reputedly each time the user requests subtitle information by 'collecting' an audio sample of the desired portion and sending it to the processor element 14). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Regarding claim 23, see the discussion on claim 22.

Regarding claim 24, the combined teachings of Zwaneveld, Hale and Engelke further teach the system according to claim 1, wherein said cellular telephone is configured to receive said synchronization information from said caption store (Fig. 3; page 12, line 25 – page 13, line 3; page 17, lines 6-12; *for the sync info or time cue stamps together with the subtitle info are stored in the storage device 11, which forwards them to the processor equipment 14 or Hale's portable user device 14 or Engelke's personal interpreter 10 or cellular telephone 20).*

Regarding claim 25, Zwaneveld further teaches the system according to claim 1, wherein said synchronization information is embedded within said presentation and wherein said user device includes a monitoring circuit configured to monitor the presentation and to extract said synchronization information therefrom (page 12, line 25 – page 13, line 3; page 30, lines 10-25). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Regarding claim 26, the combined teachings of Zwaneveld, Hale and Engelke further teach the system according to claim 25, wherein said synchronization information is embedded within the audio of said presentation and wherein the

monitoring circuit is responsive to the microphone to monitor the audio of the presentation (See Zwaneveld, page 12, line 25 – page 13, line 3; page 30, lines 10-25; Engelke teaches microphone to collect acoustic signals).

Regarding claim 27, Zwaneveld further teaches the system according to claim 25, wherein said synchronization information comprises synchronization codes occurring at different timings during the presentation (page 12, line 25 – page 13, line 3; *for synchronization codes are inherently embedded in the audio of the presentation to produce the synchronization information*).

Regarding claim 28, Zwaneveld further teaches the system according to claim 27, wherein each synchronization code is unique to uniquely define the position in the presentation (*for different or multiple display timings, it is noted that the synchronization information would also be different accordingly*).

Regarding claim 29, Zwaneveld teaches the system according to claim 1, wherein said caption store includes a plurality of sets of captions for a plurality of different presentations (*for it is noted that the system provides subtitle information for different movies and films*).

Regarding claim 30, the combined teachings of Zwaneveld, Hale and Engelke further teach the system according to claim 29, wherein said user device is configured to capture a portion of said presentation and is configured to transmit the captured portion to said caption store and when said caption store is configured to use said captured portion of the presentation to identify the presentation being made and to transmit the associated set of captions for the identified presentation to said user device

(page 30, lines 4-26; *for it is also obvious to modify the user device of Hale to capture a part presentation and decipher the presentation being made and output the captions already stored in the user device -- col. 5, lines 24-28*). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Regarding claim 31, **note the discussion on claim 30**. The combined teachings of Zwaneveld, Hale and Engelke further teach the system according to claim 30, wherein said user device is configured to process the captured portion of the presentation to extract data characteristic of the captured portion and is configured to transmit said characteristic data to said caption store, and wherein said caption store is configured to use said characteristic data to identify the presentation being made and to transmit the associated set of captions for the identified presentation to the user device (see Zwaneveld, page 30, lines 4-26; *for the extracted characteristic data is audio signature of the captured portion of the presentation*). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Claim 33 is analyzed as the portable user device discussed in claim 1.

Regarding claim 36, the combined teachings of Zwaneveld, Hale and Engelke further teach a computer readable medium storing computer executable instructions for causing a general purpose computing device to operate as the cellular telephone of claim 1 (Zwaneveld, page 30, lines 10-13; *See also* Hale, col. 2, lines 46-47 – memory and processors. *See also* Engelke, col. 3, line 64 – col. 4, line 4).

Regarding claim 40, see claim 1.

Regarding claim 42, Hale further teaches a system according to claim 1, configured to receive synchronization information defining the timing during the presentation at which each caption is to be output to the user associated with the user device and wherein said timing controller is configured to use the received wireless [acoustic] signal and the received synchronization information in determining the timing during the presentation at which each caption should be output to the user (col. 4, line 61 – col. 5, line 15 – *for caption text content is synchronized with a presentation and displayed by the portable device, the synchronization made possible by time code signals received wirelessly from a transmitter, wherein the portable device plays the caption texts at appropriate time synchronous to the presentation*).

Engelke further teaches receiving wireless acoustic signal and cellular telephone (Figs. 1 and 2).

Regarding claim 43, Engelke further teaches a system according to claim 1, wherein the first receiver is configured to receive a set of captions or said sequence of captions via a telephone network (col. 6, lines 24-38).

Regarding claim 44, Hale further teaches a system according to claim 1, wherein said first receiver is configured to receive said set of captions or said sequence of captions over a wired communications link in advance of the presentation (col. 3, lines 4-7, 17-21).

Regarding claim 45, Hale further teaches a system according to claim 1, wherein said user device is configured to use said first receiver to download a next caption from said caption store when it detects a synchronization code in the wireless signal received

from said microphone (of Engelke) (col. 3, lines 22-33 – *for use in downloading the caption content from a remote server by the portable device only when they are needed and thereby requested*). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Regarding claim 48, **note the discussion on claim 43**. Hale further teaches a system according to claim 1, wherein said caption store is provided by a remote server, wherein said user device comprises a mobile telephone and wherein the user device is configured to allow said user to interact with the remote server using the mobile telephone (col. 3, lines 10-16). Further, Engelke teaches cellular telephone (Figs. 1 and 2).

Claim 49 is analyzed as a device of claims 4 and 5.

Claims 50 and 51 are analyzed as devices of claims 6 and 7 respectively.

Claim 52 is analyzed as a device of claims 13 and 14.

Claim 53 is analyzed as a device of claim 16.

Claim 55 is analyzed as a device of claim 42.

Claims 56-60 are analyzed as devices of claims 19-23 respectively.

Claim 61 is analyzed as a device of claim 25.

Claims 62-65 are analyzed as devices of claims 27, 28, 30 and 31 respectively.

Claim 66 is analyzed as a method of claim 1.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zwaneveld in view of Hale in view of Engelke and further in view of Ogasawara (US 6,512,919).

Regarding claim 32, the combined teachings of Zwaneveld, Hale and Engelke teach the system according to claim 1, wherein said presentation is given at a venue (*for a movie or film theatre is a venue. Further, venue broadly reads on any location*).

However, they do not explicitly teach wherein said venue is configured to provide an activation code, wherein said user device is operable to receive said activation code and further comprises an inhibitor for inhibiting the operation of said caption output circuit unless said cellular telephone has received said activation code.

Ogasawara teaches a venue configured to provide an activation code, wherein said cellular telephone is configured to receive said activation code (col. 3, lines 6-17; col. 9, lines 6-14; 33-42; *for the purchase transaction program is downloaded from the server to the mobile telephone, thereby reading on an activation code, because without the transaction program the videophone cannot function as a personal electronic shopping system*) and further comprises a inhibitor for inhibiting the operation of said caption output circuit unless said cellular telephone has received said activation code (for without the purchase transaction program being sent to it, the phone can't function as a shopping system; hence it is obvious that the phone has an 'inhibitor' or access denial mechanism).

Therefore, it would have been obvious to an ordinary skilled artisan to modify the portable cellular telephone to include an access mechanism by receiving a program or

access code to access the caption store, as taught by Ogasawara, for the benefit of ensuring a privacy and proper identification of the user.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

10. Everett (US 6,701,162).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dika C. Okeke whose telephone number is (571)270-

5367. The examiner can normally be reached on Monday - Thursday, 9:00 a.m. to 7:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on (571)272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dika C. Okeke/
Examiner, Art Unit 2425

/Brian T Pendleton/
Supervisory Patent Examiner, Art Unit 2425